

DOCUMENT RESUME

02695 - [A1812856]

[Protest to Contract Award by Potential Subcontractor].
B-188959. June 20, 1977. 3 pp.

Decision re: Elec-Trol, Inc.; by Milton Socolar (for Paul G. Dembling, General Counsel).

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel; Procurement Law II.
Budget Function: National Defense: Department of Defense -
Procurement & Contracts (058).

Organization Concerned: F and M Systems Co.

Authority: 49 Comp. Gen. 9; B-177042 (1973). 55 Comp. Gen. 617.
4 C.F.R. 20.1(a). B-184852 (1975). B-188832 (1977). B-188846
(1977). B-186568 (1976). B-181265 (1974). B-186594 (1976).
B-186984 (1977). A.S.P.R. 7-2003.28.

A potential subcontractor protested that a contract award for energy control system should have gone to a bidder other than awardee. The protester was not named as a proposed subcontractor by the losing bidder, which did not join in the protest. Regulations require that party be "interested" in order that its protest be considered. Hence, protest was denied. (DJM)

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DECISION



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P.L. II*

**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-188959

DATE: June 20, 1977

MATTER OF: Elec-Trol, Inc.

DIGEST:

Protester's expectation of subcontract award does not, by itself, satisfy interested party requirement of 4 C.F.R. § 20.1(a) (1976). Accordingly, protest by potential subcontractor is dismissed.

Elec-Trol, Inc. (Elec-Trol) protests award of a contract to anyone other than F&M Systems, Inc. (F&M) under solicitation No. N62467-76-B-0356, issued by the Naval Facilities Engineering Command, Charleston, South Carolina for an energy control and monitoring system.

Elec-Trol, a potential subcontractor, contends that under its interpretation of the solicitation clause entitled "Additive or Deductive Items," F&M's bid should have been evaluated as lower than the bid submitted by Honeywell, Inc. the firm to which the Navy proposes to make award. Elec-Trol, however, did not submit a bid under the instant solicitation, and it was not named as a proposed subcontractor in the bid submitted by F&M. There was no provision in the solicitation for Government approval of subcontractors and F&M has not joined in this protest.

Our Bid Protest Procedures require that a party be "interested" in order that its protest may be considered. 4 C.F.R. § 20.1(a) (1975). In determining whether a protester satisfies the interested party criterion, consideration is given to the nature of the issues raised and the direct or indirect benefit or relief sought by the protester. Kenneth R. Bland, Consultant, B-184852, October 17, 1975, 75-2 CPD 242. This serves to insure a party's diligent participation in the protest process so as to sharpen the issues and provide a complete record on which the merits of a challenged procurement may be decided.

Elec-Trol claims to be interested in this matter by virtue of its expectation that it will be chosen as a subcontractor to F&M if that firm is awarded the prime contract. In our view, this is too tenuous a basis for claiming recognition as an interested party, particularly where the right being asserted by Elec-Trol--F&M's right to be declared low bidder--is likely to be most zealously protected by F&M itself. Furthermore, it is significant that no rights would vest in Elec-Trol by virtue of a successful protest since it would have no cognizable right to a subcontract award in the event that F&M was awarded the contract. The case is similar to that of John S. Connolly, Ph.D., B-188832, B-188846, May 23, 1977, 77-1 CPD ___, in which we declined to develop the bid protest of a potential employee of an unsuccessful offeror where the offeror did not file a protest. In such cases, we recognize an offeror's right to allow its offer to expire and to commit its resources elsewhere in reliance on an adverse agency determination. Where, however, there is a possibility that recognizable interests will be inadequately protected if our bid protest forum is restricted solely to offerors in individual procurements, we have recognized the rights of non-offerors, including subcontractors, to have their protests considered on the merits. Abbott Power Corporation, B-186568, December 21, 1976, 76-2 CPD 509, District 2, Marine Engineers Beneficial Association--Associated Maritime Officers, AFL-CIO, B-181265, November 27, 1974, 74-2 CPD 298; B-177042, January 23, 1973, 49 Comp. Gen. 9 (1969). For example, we would review a protest by a potential flooring subcontractor concerning the flooring specification. However, we would dismiss a flooring subcontractor's protest concerning the rejection of the prime contractor's bid as nonresponsive to the roofing specification. We have also recognized the right of a subcontractor to protest a prime contract award where the subcontractor's financial or other interest is evident from the fact that the protester is listed as a proposed subcontractor and the potential prime contractor acquiesces in the protest. Educational Projects, Inc., 56 Comp. Gen. ___ (1977), B-186984, March 1, 1977, 77-1 CPD 151

We note that in Enterprise Roofing Service, 55 Comp. Gen. 617 (1976), 76-1 CPD 5, we stated that a protester's position as a proposed subcontractor or failure to participate as a bidder does not destroy its entitlement to be considered as an interested party. However, the protester in that case was not shown to be outside the class of persons

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interested in questioning the eligibility criteria of the solicitation. In other words the protester was in the position of an interested potential bidder and the fact that it may have participated as a proposed subcontractor did not preclude it from questioning the solicitation's eligibility criteria.

In view of the fact that, in the instant case, the protester's financial interest in the relief requested is wholly contingent on factors outside the contract award process and the fact that the bidder has not joined in this protest, we conclude that development and consideration of this matter as a bid protest would serve no useful purpose.

Accordingly, the protest is dismissed.

We note, however, the protester disagrees with the Navy's use of the "Additive or Deductive Items (1968 Apr)" clause (ASPR § 7-2003.28 (1976 ed.)). Specifically, the protester disagrees with the Navy's selection of the low bidder on the basis of items 1, 2 and 4, even though the above cited clause allows for skipping of an additive item if addition of another bid item (e.g., item 3) in the listed order of priority would make the award exceed the available funds and the addition of the next subsequent additive bid item (e.g., item 4) in a lower amount would not exceed such funds. The effect of protester's interpretation is to permit the determination of the low bidder on a basis different than the work to be performed under the contract. In this connection we note Floyd Kessler, B-186594, September 3, 1976, 76-2 CPD 218, wherein we stated that the lowest responsible bidder must be determined based on the work to be let. Consequently, it appears that the protester's interpretation of the subject clause is inconsistent with this general basic rule of procurement law.

Milton J. Aronson
for Paul G. Deroling
General Counsel